

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ALLEN LOWN,

Defendant-Appellant.

UNPUBLISHED

January 26, 2012

No. 299564

Saginaw Circuit Court

LC No. 05-026696-FH

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

After a jury trial, defendant Donald Allen Lown was convicted of second-degree home invasion, MCL 750.110a(3). Defendant appeals as of right. We vacate defendant's conviction and remand for proceedings consistent with this opinion.

On September 28, 2005, defendant was arrested and charged with second-degree home invasion. On December 7, 2007, defendant moved to dismiss the charge for lack of jurisdiction on the basis of Michigan's "180-day rule," MCL 780.133, and, alternatively, a violation of his constitutional right to a speedy trial. The trial court denied defendant's motion to dismiss on April 15, 2008, without addressing defendant's constitutional argument. After this Court denied defendant's application for leave to appeal, our Supreme Court remanded the case to this Court on February 29, 2009, for consideration as on leave granted. *People v Lown*, 483 Mich 893; 760 NW2d 479 (2009). On October 1, 2009, this Court affirmed the trial court's denial of defendant's motion to dismiss on the basis of "180-day rule" and remanded to the trial court for findings of fact and consideration of defendant's speedy-trial claim. *People v Lown*, unpublished per curiam opinion of the Court of Appeals, issued October 1, 2009 (Docket No. 287033), slip op at 1, 4. We did not retain jurisdiction. *Id.* On November 10, 2009, defendant filed an application for leave to appeal this Court's decision to our Supreme Court. Nevertheless, on November 25, 2009, the trial court conducted an evidentiary hearing to address defendant's speedy-trial claim. The trial court then issued an order on December 1, 2009, denying defendant's motion to dismiss on the basis of a violation of his constitutional right to a speedy trial. In January 2010, the trial court conducted a jury trial. The jury convicted defendant of second-degree home invasion on January 21, 2010. The next day, our Supreme Court granted defendant's application for leave to appeal. *People v Lown*, 485 Mich 1036; 776 NW2d 914 (2010). On May 12, 2010, the trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to 9 to 15 years' imprisonment. On January 14, 2011, our Supreme Court

affirmed this Court's ruling regarding the "180-day rule" but did not address defendant's speedy-trial argument as the issue was not before the Court. *People v Lown*, 488 Mich 242, 252-253 n 10, 272-273; 794 NW2d 9 (2011).

Defendant contends that the trial court did not have the jurisdiction or authority to bring him to trial. We agree.

We review jurisdictional issues de novo. *Mich's Adventure, Inc v Dalton Twp*, 287 Mich App 151, 153; 782 NW2d 806 (2010); see also *People v Clement*, 254 Mich App 387, 389-390; 657 NW2d 172 (2002).

MCR 7.215(E)(1) provides, in pertinent part:

When the Court of Appeals disposes of . . . an appeal, whether taken as of right, by leave granted, or by order in lieu of leave being granted, its opinion or order is its judgment.

In this case, we issued an opinion as on leave granted, affirming the trial court's denial of defendant's motion to dismiss but remanding "for consideration of the speedy trial issue." We did not retain jurisdiction. Under MCR 7.215(E)(1), the opinion issued by this Court was a "judgment" because it disposed of defendant's appeal. See *Johnson v White*, 261 Mich App 332, 347; 682 NW2d 505 (2004) ("MCR 7.215(E)(1) provides that when the Court of Appeals disposes of an appeal, its opinion is its judgment.").

MCR 7.215(F)(1) provides:

Unless otherwise ordered by the Court of Appeals or the Supreme Court or as otherwise provided by these rules,

(a) the Court of Appeals judgment is effective after the expiration of the time of filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court[.]

After remand, defendant had 56 days to file an application for leave to appeal this Court's judgment with the Supreme Court. See MCR 7.302(C)(4)(a).

In this case, the time for defendant to file an application for leave to appeal to the Supreme Court did not expire; rather, defendant timely filed his application on November 10, 2009, within the 56-day period. Thus, under MCR 7.215(F)(1)(a), defendant's application prevented this Court's judgment from becoming effective until the Supreme Court disposed of the case.

MCR 7.302(C)(5) provides:

If a party appeals a decision which remands for further proceedings as provided in subrule (C)(4)(a), the following provisions apply:

(a) If the Court of Appeals decision is a judgment under MCR 7.215(E)(1), an application for leave to appeal stays proceedings on remand unless the Court of Appeals or the Supreme Court orders otherwise.

Here, neither this Court nor our Supreme Court ordered that proceedings were to continue on remand despite MCR 7.302(C)(5). Thus, defendant's application for leave to appeal automatically stayed the trial court proceedings on remand. See MCR 7.302(C)(5).

Our Supreme Court disposed of defendant's case on January 14, 2011; therefore, this Court's opinion became "effective" on January 14, 2011. See MCR 7.215(F)(1)(a). However, by that time, the trial court had already done the following: held an evidentiary hearing to address defendant's constitutional claim; denied defendant's motion to dismiss with respect to the constitutional claim; and tried, convicted, and sentenced defendant. None of these proceedings should have taken place under Michigan law.

The present case is similar to *People v Swafford*, 483 Mich 1; 762 NW2d 902 (2009).¹ In *Swafford*, our Supreme Court stated:

After the Court of Appeals rendered its first decision, but before [the Supreme Court] vacated that decision, defendant was brought to trial, convicted as charged, and sentenced to life in prison. Defendant should not have been brought to trial at that time. The Court of Appeals decision reversing the trial court's dismissal of charges and remanding the case for trial had not taken effect, because defendant filed a timely appeal to [the Supreme Court]. MCR 7.215(F)(1)(a). Moreover, during the pendency of a timely appeal to [the Supreme Court], a Court of Appeals decision remanding to a lower court for further proceedings is automatically stayed, unless the Court of Appeals or [the Supreme Court] orders otherwise. MCR 7.302(C)(5). Neither [the Supreme Court] nor the Court of Appeals ordered further proceedings to begin notwithstanding defendant's timely appeal. Accordingly, the trial court did not have proper jurisdiction to bring defendant to trial or convict defendant. [*Swafford*, 483 Mich at 6 n 5.]

Under Michigan law, the trial court did not have jurisdiction to conduct the lower court proceedings after defendant filed his application for leave to appeal, including bringing defendant to the trial that resulted in his conviction. Again, this Court's order of remand was not

¹ We note that, in its previous decision in this case, our Supreme Court specifically distinguished *Swafford*, but not with respect to this issue. It compared defendant's previous argument before this Court regarding the application of Michigan's "180-day rule" to the Interstate Agreement on Detainers, MCL 780.601. *Lown*, 488 Mich at 257 n 22. This comparison does not apply to, nor did the Supreme Court address, defendant's constitutional speedy trial argument. *Id.* at 252-253 n 10. Nor does it prevent this Court from following *Swafford* with respect to defendant's jurisdictional claim.

effective until January 14, 2011. And, defendant's timely application for leave to appeal automatically stayed the proceedings until our Supreme Court disposed of defendant's case. When a circuit court acts without the jurisdictional authority, its acts are void. See *People v Wynn*, 73 Mich App 713, 719; 253 NW2d 123 (1977) ("We hold that the circuit court was without jurisdiction when it conducted the defendant's trial. The trial and all subsequent proceedings are therefore void."); *Clement*, 254 Mich App at 394 ("When a court is without jurisdiction of the subject matter, its acts and proceedings are of no force and validity; they are a mere nullity and are void."). Thus, we have no choice but to vacate defendant's conviction. On remand, the trial court shall again conduct an evidentiary hearing, make findings of fact, and decide whether defendant was denied his constitutional right to a speedy trial. The trial court shall, if necessary, provide defendant a new trial.

Although defendant has presented his constitutional speedy-trial claim to this Court for review, we do not address it as the trial court has not validly done so. Moreover, because defendant's conviction must be vacated, we find no need to address the errors defendant alleges regarding jury instruction and sentencing.

We vacate defendant's conviction and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro